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No. 99-1165

In the Supreme Court of the United States

JERON J. LAFARGUE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether subject matter jurisdiction existed over petitioners' claim under the Quiet Title Act, 28 U.S.C. 2409a.

2. Whether the right-of-way easements conveyed in a donation to the United States were abandoned or terminated when the United States subsequently transferred those property rights to a third party.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A17) is unpublished, but the decision is noted at 193 F.3d 516 (Table). The opinion of the district court (Pet. App. B1-B28) is reported at 4 F. Supp. 2d 593.

JURISDICTION

The judgment of the court of appeals was entered on August 16, 1999. A petition for rehearing was denied on October 13, 1999 (Pet. App. C3). The petition for a writ of certiorari was filed on January 11, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are 15 landowners who granted right-of-way easements to the United States in the 1970s for the construction of an oil pipeline in Louisiana as part of the Strategic Petroleum Reserve Program (SPRP). Congress established the SPRP under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6201 *et seq.*, for the purpose of providing a petroleum reserve to reduce the impact of supply interruptions or reductions in imports of crude oil and refined petroleum products. The EPCA provides the federal government with authority to "acquire by purchase, condemnation, or otherwise, land or interests in land for the location of storage and related facilities." 42 U.S.C. 6239(f)(1)(B). Under the EPCA, the government may also "construct, purchase, lease, or otherwise acquire storage and related facilities," and "use, lease, maintain, sell, or otherwise dispose of storage and related facilities acquired pursuant to this part." 42 U.S.C. 6239(f)(1)(C) and(D).

In furtherance of the SPRP, the government constructed a 36-inch diameter pipeline extending approximately 67 miles between the government-owned terminal in St. James Parish, Louisiana, and its storage facility at Weeks Island, Louisiana. Pet. App. B2. In preparation for the construction, the government sought and obtained right-of-way easements from petitioners, or their predecessors, who executed a document, entitled Donation of Servitude and Easement (Donation), to "donate, convey, transfer, set over and deliver, * * * unto the UNITED STATES OF AMERICA and its assigns, * * * a perpetual and assignable easement and right-of-way in, on, over and across [their] land for the location * * * of a single pipeline in the establishment, management, and main-

tenance of the Strategic Petroleum Reserve." *Id.* at E6.

The pipeline was completed in 1979, and was in service as part of the SPRP from October 1980 to March 1997. In 1997, due to geotechnical problems at Weeks Island, the government decommissioned and sold the pipeline along with all rights-of-way, easements, and servitudes to Louisiana Intrastate Gas Company (LIG) for $22,000,000. The pipeline was sold "as is" and "where is" under a quitclaim deed. LIG now uses the pipeline to transport natural gas. Pet. App. B4-B5.

2. On July 31, 1997, petitioners, on behalf of themselves and a class of others similarly situated, filed suit against the United States and LIG seeking a judicial declaration that the easements they granted the United States had expired or terminated, and that they owned that portion of the pipeline for which the rights-of-way were granted (Count I). Pet. App. B6. Petitioners alternatively sought a judgment requiring the United States to remove the pipeline (Count II), or an injunction limiting the purposes for which the United States and LIG may use the pipeline (Count III). Petitioners sought $22,000,000 in damages from the United States. See *LaFargue* v. *United States*, 4 F. Supp. 2d 580, 583-584 (E.D. La. 1998).

The United States filed a motion to dismiss, arguing that the district court lacked subject matter jurisdiction because the government had disclaimed any interest in the pipeline, and petitioners' damages claim exceeded the amount necessary to maintain concurrent jurisdiction over petitioners' takings claim pursuant to 28 U.S.C. 1346(a)(2). The district court denied the government's motion, concluding that petitioners were seeking relief pursuant to the Quiet Title Act (QTA), 28 U.S.C.

2409a, and its jurisdictional counterpart, 28 U.S.C. 1346(f). The court did, however, dismiss Counts II and III as seeking relief not available under the QTA. See *LaFargue*, 4 F. Supp. 2d at 593. In denying the motion to dismiss petitioners' QTA claim, the district court recognized that its jurisdiction under the QTA ceases "[i]f the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial." *Id.* at 588 (quoting 28 U.S.C. 2409a(e)). The district court concluded, however, that the government's disclaimer of its interest on August 22, 1997, did not cause federal jurisdiction to cease because the sale of the property to LIG post-dated the filing of petitioners' complaint. For that reason, the district court did not confirm the government's disclaimer of its interest in the pipeline for purposes of QTA jurisdiction. 4 F. Supp. at 589.

On the merits, the district court subsequently granted summary judgment to the United States and LIG. Pet. App. B1. Applying Louisiana law and general principles of federal law, the court concluded that the Donation granting the easements did not restrict their use to the government's SPRP and that the easements could be used in a manner that did not aid the SPRP without being extinguished. *Id.* at B23-B28.

3. The Fifth Circuit, in an unpublished opinion, affirmed the district court's grant of summary judgment. Pet. App. A1-A17.

a. With respect to subject matter jurisdiction under the QTA, the court of appeals held that the disclaimer provision of 28 U.S.C. 2409a(e) "does not apply where the district court had jurisdiction at the commencement of suit and the government thereafter takes affirmative steps to transfer its interest in the subject property."

Pet. App. A3. The court concluded that the language of the disclaimer provision manifests Congress's intent to permit the courts some flexibility in its application because it provides for a cessation of jurisdiction only if the disclaimer is "confirmed by order of the court." *Id.* at A4 (quoting 28 U.S.C. 2409a(e)). The court observed that its holding is consistent with the general rule that jurisdiction is determined at the time a complaint is filed. *Ibid.* The court also expressed the view that permitting the government to disclaim its interest at any time prior to trial would lead to a waste of judicial resources by allowing the government to alter its position in response to the particular claims set forth in a complaint. *Ibid.* Finally, the court found its interpretation of Section 2409a(e) to be consistent with *Delta Savings & Loan Association* v. *IRS*, 847 F.2d 248 (5th Cir. 1988), and the Ninth Circuit's decision in *Bank of Hemet* v. *United States*, 643 F.2d 661 (1981), which held that jurisdiction under Section 2409a must be determined at the time the complaint is filed. Pet. App. A5-A6.

b. The court of appeals next rejected petitioners' claim that the decommissioning of the pipeline by the government resulted in either an abandonment of the pipeline or the termination of the easements, causing a reversion of the easements and pipeline to petitioners. Pet. App. A7. The court first held that, while the QTA should be interpreted in accordance with general principles of federal law, courts "may properly look to state law as an aid in determining the application of statutory language to specific facts" where such law does not conflict with federal policy. *Ibid.* The court found that, under Louisiana law, the government's transfer of the pipeline to LIG did not amount to an "abandonment" because it did not relinquish ownership

without vesting ownership in another. *Id.* at A9. The court explained that petitioners' abandonment interpretation conflicted with express language of the Donation providing that the donors conveyed an assignable interest to the government. *Id.* at A10.

The court next rejected petitioners' alternative argument that the easements terminated because the government ceased using the pipeline for the SPRP. The court observed that the Donation contained specific conditions for termination, including non-use, abandonment, and failure to commence construction by December 1, 1981, but it did not provide for termination if the use of the pipeline changed. Pet. App. A11. Because Louisiana law requires a donor expressly to reserve a right of reversion, the court of appeals refused to read an implied termination into the Donation based on the Donation's purpose of conveying an easement for the location of a pipeline as part of the SPRP. *Id.* at A11-A12.

Judge Emilio M. Garza dissented, stating that he would have held that the district court was divested of subject matter jurisdiction as a result of the government's disclaimer of its interest in the pipeline under Section 2409a(e). Pet. App. A16-A17.

ARGUMENT

Petitioners abandon their prior legal position that federal jurisdiction exists over their complaint and now contend that the QTA did not confer federal jurisdiction in this case. The only apparent reason why they would take that new position now is to erase the claim-preclusive effect of the judgment on the merits so that they may attempt to relitigate their claims in state court. This Court should not grant review to promote that result. Alternatively, petitioners assert that the

court of appeals erred by ruling that the United States may assign its interest in the pipeline easements to LIG under the Donation. Petitioners identify no conflict between the decision below and any decision of this Court or any other court of appeals. Accordingly, further review is not warranted.

1. Petitioners ask this Court to dismiss their own complaint for lack of federal jurisdiction, a request that completely reverses their legal position in this case from the filing of their QTA claim in federal court through the issuance of the court of appeals' decision. See *LaFargue*, 4 F. Supp. 2d at 585 (discussing complaint's assertion of jurisdiction under the QTA, 28 U.S.C. 2409a); Pet. App. A2-A6. Throughout the proceedings in the district court and court of appeals, petitioners have consistently and vigorously opposed the government's argument that federal jurisdiction was lacking under Section 2409a(e) as a result of the government's disclaimer of its interest in the pipeline.[1] Both the district court and court of appeals ruled in favor of petitioners on that jurisdictional issue, while denying petitioners relief on the merits of their claim seeking to divest the government (and LIG) of title to the relevant rights-of-way.

Only now, after having lost on the merits at each level of these proceedings, do petitioners seek to have this case dismissed in federal court for lack of jurisdic-

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[1] See Plaintiffs' Consolidated Opposition Memorandum to Defendants' Motions to Dismiss and/or to Transfer 6-10 (Feb. 9, 1998); Plaintiffs' Supplemental Opposition to Defendants' Motions to Dismiss 1-4 (Mar. 2, 1998); Plaintiffs-Appellants' Motion to Strike, or in the Alternative, for Enlargement of Time to File Reply Brief and Brief Length; and Motion to Reduce Delay for Response to this Motion 1-5 (Dec. 1, 1998); Reply Brief of Appellants 4-13 (Dec. 11, 1998).

tion as a predicate to relitigating their substantive claims in state court. That sudden assertion of a lack of jurisdiction over their own complaint at this late stage in the litigation, and its associated waste of federal judicial resources, does not warrant this Court's review. See *Davis* v. *Wakelee*, 156 U.S. 680, 689 ("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position."). Petitioners thus impermissibly seek "two bites of the apple," by asserting federal jurisdiction over their complaint while reserving the option of returning to state court in the event they fail to obtain relief on the merits in federal court.

2. That is not to say that we disagree with petitioners' new position on jurisdiction. In our view, the dissent below correctly states the law on QTA jurisdiction under 28 U.S.C. 2409a(e). See Pet. App. A16-A17. Notwithstanding that error by the court below, further review of that issue is not warranted. Petitioners contend (Pet. 8) that the decision below "is contrary to the express language of section 2409a(e) of the QTA and every district and federal appellate court that has construed section 2409a(e)." Only three of the decisions upon which petitioners rely are court of appeals decisions, however, and each is inapposite. See Pet. 8, 12 (citing *Lee* v. *United States*, 629 F. Supp. 721 (D. Alaska 1986), aff'd, 809 F.2d 1406 (9th Cir. 1987), cert. denied, 484 U.S. 1041 (1988); *Leisnoi, Inc.* v. *United States*, 170 F.3d 1188 (9th Cir. 1999); and *Gardner* v. *Stager*, 103 F.3d 886 (9th Cir. 1996), cert. denied, 522 U.S. 811 (1997)).

In *Lee*, for example, the relevant government disclaimer occurred prior to—not after—the filing of the

plaintiff's complaint. See 809 F.2d at 1408-1409 (stating that disclaimer occurred at time of the 1979 land conveyance, which was prior to the filing of the complaint). Furthermore, the district court in *Lee* had concluded that the disclaimer was required under the terms of the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* 809 F.2d at 1409 (quoting 629 F. Supp. at 726). That overriding condition on the conveyance of property was not present in the instant case. In any event, the court in *Lee* ultimately rejected the claims against the United States as barred by the statute of limitations, thereby relegating to dicta its statements on the disclaimer. See *id.* at 1409.

In *Leisnoi*, the court addressed not whether it was divested of jurisdiction by the United States' disclaimer of interest under Section 2409a(e), but rather whether the court had jurisdiction at the commencement of the litigation pursuant to Section 2409a(a). 170 F.3d at 1192-1193. Section 2409a(a), which petitioners have not put in issue in this litigation, provides that "[t]he United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." 28 U.S.C. 2409a(a). As the *Leisnoi* court concluded, "[f]or *initial* jurisdiction to lie, therefore, there must be a conflict in title between the United States and the plaintiff." 170 F.3d at 1192 (emphasis added). On the facts presented in *Leisnoi*, the court held that a state court decision had removed any cloud on the transfer of title between the United States and the third-party transferee and thus that there was "no colorable conflict" between an interest of the United States and the plaintiff "[a]t the time the complaint was filed" in federal district court. *Id.* at 1193 (relying on

initial jurisdiction under 28 U.S.C. 2409a(a)). That holding of a lack of jurisdiction under Section 2409a(a) has no bearing on the issue presented here, which is whether the disclaimer of interest by the United States prior to trial divested the court of jurisdiction under Section 2409a(e).[2]

Finally, *Gardner* is inapposite. In that case, the plaintiffs' suit was held to be barred because they had not sued under the QTA. 103 F.3d at 888. Petitioners quote the language of Section 2409a(e) that a disclaimer may be made "at any time prior to the actual commencement of trial," but incorrectly attribute (Pet. 12) that language to the *Gardner* court, which neither cited nor discussed Section 2409a(e). See 103 F.3d at 886-888. Thus, notwithstanding the erroneous jurisdictional ruling by the court of appeals in this case, its holding does not conflict with the appellate decisions cited by petitioners.[3]

3. In the alternative, petitioners contend that the court of appeals improperly relied on federal common law, and that its decision therefore is inconsistent with *United States* v. *Winstar Corporation*, 518 U.S. 839

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[2] We concede that the requisites of Section 2409a(a) were satisfied when petitioners filed their complaint. Our position is and has been, however, that the court subsequently was divested of jurisdiction under Section 2409a(e) by the government's disclaimer of interest in the property rights conferred by the Donation.

[3] As previously argued by the government and now argued by petitioners (Pet. 14-15), the court of appeals could have distinguished *Delta Savings & Loan Association* v. *IRS*, 847 F.2d 248 (5th Cir. 1988), and *Bank of Hemet* v. *United States*, 643 F.2d 661 (9th Cir. 1981), on the grounds that those decisions merely held that QTA jurisdiction must be determined at the time a complaint is filed and did not specifically address the disclaimer provision of Section 2409a(e). See note 2, *supra*.

(1996), *Erie Railroad* v. *Tompkins*, 304 U.S. 64 (1938), and the Full Faith and Credit Clause of the Constitution, U.S. Const. Art. IV, § 1. Petitioners argue (Pet. 16) that, despite their own decision to file this action as a QTA suit against the United States in federal court, the court of appeals erred by applying federal law in this case because the underlying issue involves the interpretation of a contract between "private citizens." That argument is without merit.

Although the court below stated that the "Quiet Title Act should be interpreted 'in accordance with principles of federal law,'" Pet. App. A7, it construed the Donation as a contract under Louisiana state law. The court held that "[u]nder Louisiana law, '[e]ach provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole.'" *Id.* at A10 (quoting La. Civ. Code Ann. art. 2050 (West 1987)). The court rejected petitioners' argument that the transfer of the pipeline amounted to an abandonment, explaining that under Louisiana law, there must be a relinquishment of property without vesting ownership in another for abandonment to occur. Pet. App. A9-A10. The court further held that: Louisiana law requires a donor expressly to reserve a right of reversion; the language of the Donation here did not do so and, in fact, stated that the conveyance was "perpetual" and "assignable"; and the Donation could not be construed to contain an implied right of reversion, as urged by petitioners. *Id.* at A11-A12.

Despite the court's holding based on the Louisiana Civil Code and the state cases construing it, petitioners refer (Pet. 20-22) to the court's citation to three non-Louisiana cases (Pet. App. A13) as evidence that the court improperly relied on "federal common law." Peti-

tioners fail to point out, however, that the court did not base its decision on those cases. Rather, the court stated that it found those cases "persuasive" and consistent with its decision that the property interest did not revert to the grantors under Louisiana law based upon the original purpose for the Donation. *Ibid.*[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4] Contrary to petitioners' argument, this Court's decision in *Winstar* did not address the choice-of-law question posed by petitioners. The relevant language from *Winstar* cited by petitioners (Pet. 16) addressed the sovereign acts doctrine and whether the government may discharge its contractual liability by enacting subsequent legislation exculpating itself from such liability. 518 U.S. at 891-898 (opinion of Souter, J.). This Court's rejection of the sovereign acts defense in the context presented by *Winstar* is not applicable in this case, where the relevant federal statute was enacted prior to the contract at issue, does not address in any manner the government's liability under that contract, and, in fact, is a jurisdictional statute. Nor does the court of appeals' reference to principles of federal law in interpreting the QTA violate this Court's ruling in *Erie*. Unlike *Erie*, this case is not based on federal diversity jurisdiction. Petitioners based their claim on the QTA, which contains specific statutory requirements pertaining to the maintenance of an action against the federal government.